

**FILED**

**JUL 26 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE VALENZUELA-FONSECA,

Defendant - Appellant.

No. 05-30612

D.C. No. CR-04-06036-EFS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of Washington  
Edward F. Shea, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jorge Valenzuela-Fonseca appeals the sentence imposed following his guilty plea to illegal reentry following deportation in violation of 8 U.S.C. § 1326.

Valenzuela-Fonseca contends that the district court erred in sentencing him

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 8 U.S.C. § 1326(b) to more than the two-year maximum set forth in 8 U.S.C. § 1326(a), when he did not admit and a jury did not find any prior convictions. He argues that the avoidance-of-constitutional-doubt doctrine requires that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), be limited to the holding that a prior conviction that increases the maximum penalty need not be alleged in the indictment when the prior conviction, unlike here, is admitted as part of a guilty plea. Although conceding that the issue is foreclosed by *United States v. Pacheco-Zepeda*, 234 F.3d 411 (9th Cir. 2000), and *United States v. Quintana-Quintana*, 383 F.3d 1052 (9th Cir. 2004), to preserve the issue, Valenzuela-Fonseca also argues that in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and subsequent Supreme Court decisions, *Almendarez-Torres* has been overruled and § 1326(b) is unconstitutional.

These contentions are foreclosed. *See United States v. Beng-Salazar*, No. 04-50518, 2006 WL 1843394, at \*2 (9th Cir. Jul. 6, 2006) (rejecting as foreclosed the contention that recent decisions of the Supreme Court limit *Alemendarez-Torres*'s holding to cases where a defendant has admitted his prior convictions during a guilty plea); *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005) (rejecting contention that the government is required to plead prior convictions in the indictment and prove them to a jury unless the defendant admits

the prior convictions); *United States v. Rodriguez-Lara*, 421 F.3d 932, 949-50 (9th Cir. 2005) (affirming the continuing validity of *Almendarez-Torres* and rejecting a constitutional challenge to § 1326(b)); *United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005) (noting that we are bound by the Supreme Court's holding in *Almendarez-Torres* that a district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

**AFFIRMED.**